

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

AMENDMENTS TO RULES RELATING TO
NON-PUBLIC INFORMATION

Docket No. RM2018-3

INITIAL COMMENTS OF THE UNITED STATES POSTAL SERVICE
(March 23, 2018)

In Order No. 4403 (February 13, 2018), the Commission initiated this docket to “consider amending the Commission’s rules relating to non-public information.” The Order sets today as the deadline for interested parties to provide comments. The Postal Service hereby submits its Initial Comments.

Introduction

On February 13, 2018, the Postal Regulatory Commission issued Order No. 4403, entitled “Notice of Proposed Rulemaking Relating to Non-Public Information,” and established Rulemaking docket RM2018-3. The rulemaking concerns revisions to the rules governing all aspects of non-public information filed with the Commission, including the filing, protection, and disclosure of such information.

As an initial matter, the Postal Service expresses its appreciation to the Commission for initiating this rulemaking. The Postal Service is favorably disposed to support efforts that streamline and simplify procedures, and, in the Postal Service’s view, a number of the proposed revisions are well aimed at achieving that objective. The Postal Service submits the following comments in order to provide ways that the

rulemaking can be further improved to better protect non-public information and to lessen the burden of filing non-public information.

I. THE COMMISSION'S PROPOSED RULES OFFER OPPORTUNITIES TO INCREASE PROTECTION FROM HARMS RELATED TO POTENTIAL DISCLOSURE OF NON-PUBLIC INFORMATION.

The Commission states that its proposed changes take into consideration an interest in “ensuring appropriate levels of protection.”¹ While the Postal Service appreciates the Commission’s consideration of this important issue, there are additional steps that the Commission could take to help protect the confidential materials of the Postal Service and other individuals and entities with proprietary interests.

A. The Commission’s Proposed Eligibility Standards for Access to Non-Public Materials Would Benefit from Further Revisions.

Proposed Rule 3007.300(a)(3) incorporates existing Rule 3007.24(a)(3), regarding eligibility for access to non-public materials, and modifies it by inserting the term “non-employee” to describe the “subject matter experts assisting the Commission in carrying out its duties” who may obtain access without the need for issuance of an order. The use of the broad term “non-employee” creates uncertainty as to whether such individuals would be held to the same or similar requirements and conditions of access as contractors or attorneys who assist the Commission in carrying out its duties. This creates the risk of a person being able to access non-public, commercially sensitive materials without being bound by any contractual terms or code of conduct that would prevent that person from disseminating the materials at will. Although proposed Rule 3007.302 prohibits such dissemination and requires persons with access

¹ See PRC Order No. 4403, Notice of Proposed Rulemaking Relating to Non-public Information, Docket No. RM2018-3, February 13, 2018, at 3.

to non-public materials to exercise a reasonable degree of care, there are no apparent sanctions for violating those provisions. To remedy this issue, as shown in the Appendix to these comments, proposed Rule 3007.300(a)(3) should be revised to read as follows: “Contractors, attorneys, or other non-employee subject matter experts, who have entered into a contractual arrangement with the Commission and executed appropriate nondisclosure agreements that give effect to the protections found in Appendix A to this subpart, assisting the Commission in carrying out its duties.”

The Commission’s Order also proposes changes and clarifications to subsections (b) and (c) of proposed Rule 3007.300. Proposed Rule 3007.300(b) codifies language barring access to non-public materials by persons “involved in competitive decision-making,” which is currently in the sample Statement of Protective Conditions in existing Appendix A to part 3007. The term “involved in competitive decision-making” is used to identify individuals who, due to their particular interests, obligations, or responsibilities, would be in a position to gain a competitive advantage through access to non-public information filed with the Commission, and to use such information to make decisions that could cause competitive harm to persons that hold a proprietary interest in it. In current practice, individuals seeking access to non-public information must sign a Statement of Protective Conditions before obtaining access to the requested information, and the language in the sample Statement of Protective Conditions in existing Appendix A to part 3007 serves as a template that is used or modified prior to execution. Although codifying a general prohibition against access by persons involved in competitive decision-making based on this language may help protect parties with a proprietary interest in non-public materials, codifying the sample

definition of “involved in competitive decision-making” could result in the very type of harm that this language aims to eliminate.

In particular, proposed Rule 3007.300(b) broadly states that competitive decision-making “does not include rendering legal advice,” regardless of whether such legal advice is provided by outside counsel or an in-house attorney. Unlike outside counsel, who is typically assigned discrete tasks tied to specific areas of law, an in-house attorney may be involved in a wide assortment of advice matters and serve as a decision-maker across organizational departments, especially over time. Once an in-house attorney acquires knowledge of commercially sensitive, non-public materials, that same attorney would be able to utilize such materials (whether consciously or unconsciously) to formulate advice in furtherance of competitive activities, or make business recommendations which are essential to and inseparable from his or her role as in-house counsel. The same could be true of outside counsel in certain circumstances as well. Categorically excluding legal advice from the definition of being involved in competitive-decision making thereby creates a risk of non-public materials being used in ways that could be competitively harmful.

Therefore, as demonstrated by the strikethrough text in the Appendix to these comments, proposed Rule 3007.300(b) should exclude any specific definition of “involved in competitive decision-making,” as the nuances of such definition may vary depending on the role of the person seeking access and the type of non-public information that is at stake. As also demonstrated in the Appendix, the definition of “involved in competitive decision-making” should be removed from proposed Appendix A to subpart C of part 3007 as well.

With regard to persons required to file a motion for access to non-public materials, proposed Rule 3007.300(c) would expand the scope of existing Rule 3007.24(b) to include persons who seek access for the purpose of “aiding the initiation of a proceeding before the Commission.” Proposed Rule 3007.301(b)(2)(ii) correspondingly lists the requirements of a motion filed by a person who seeks access “to aid initiation of a proceeding,” which include only that “the motion describe the subject of the proposed proceeding, how the materials sought are relevant to that proposed proceeding, and when the movant anticipates initiating the proposed proceeding.” In its analysis of proposed changes, the Commission cites to a motion filed by United Parcel Service, Inc. (UPS) to support the position that allowing a person to seek access for this purpose is consistent with past practice.² It should be clarified, however, that the motion filed by UPS was not submitted for the sole purpose of aiding the initiation of a proceeding.³ Although UPS noted that its completed data analysis would “also inform UPS’s forthcoming petition to the Commission,” its motion sought continued access to materials directly relevant to UPS’s participation in the pending 2014 Annual Compliance Review proceeding.⁴ Parties will still be able to request similar access for “the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings)” under proposed Rule 3007.300(c),

² See *id.* at 22 (citing Docket No. ACR2014, United Parcel Service, Inc.’s Motion Requesting Continued Access to Non-public Materials Under Protective Conditions, March 27, 2015, at 2).

³ See Docket No. ACR2014, United Parcel Service, Inc.’s Motion Requesting Continued Access to Non-public Materials Under Protective Conditions, March 27, 2015, at 2. Specifically, UPS broadly claimed that its outside counsel and consultants required more time to review certain non-public files “directly relevant to analyses UPS would like to conduct regarding the Postal Service’s compliance with its obligations under 39 U.S.C. § 3633.” See *id.*

⁴ See *id.* UPS argued that “continued access to these materials outside of the tight time constraints of the ACD process will enable UPS to present a more detailed and helpful analysis to the Commission.” See *id.* at 6.

even without the Commission’s suggested language concerning “aiding the initiation of a proceeding.”

Unlike in the scenario cited by the Commission, the Commission’s proposed rules could enable persons with only a vague, undeveloped proposal for the initiation of a new proceeding to obtain access to commercially sensitive, non-public materials by providing only limited justification. The proposed rules also set forth no consequences for when a successful movant fails to ultimately use such non-public materials as intended. Furthermore, current procedural options undermine the necessity of accessing non-public information solely to help initiate a proceeding. For example, interested persons may already request that the Commission open a public inquiry docket on a matter of public significance, and may then seek access to non-public materials to aid their participation in that proceeding once it is pending.⁵

Therefore, as demonstrated by the strikethrough text in the Appendix, proposed Rules 3007.300(c) and 3007.301(b)(2) should not include any language that permits persons to request access to non-public materials for the sole purpose of aiding the initiation of a proceeding.

B. The Commission’s Proposed Rules Do Not Address the Potential Impact of Inadvertent Public Disclosure or the Effect of Public Disclosure on Similar Types of Non-Public Materials.

Proposed Rule 3007.101(a) provides that, except for inadvertent public filings that are handled pursuant to proposed Rule 3007.205, non-public materials lose their

⁵ See, e.g., Notice Establishing Docket Concerning Service Performance Measurement Data, Docket No. PI2016-1, October 29, 2015. The Commission opened this public inquiry docket pursuant to the Government Accountability Office’s (GAO) recommendation to initiate a proceeding for the purpose of identifying how the Postal Service could improve the quality and completeness of its service performance data. See *id.* at 1-2.

non-public status if the submitter publicly discloses them with the consent of each affected person who holds a proprietary interest in the materials. In its analysis of proposed changes, the Commission explains that proposed Rule 3007.101(a) was drafted “to reflect that consensual voluntary public disclosure of materials that were initially claimed to be non-public has been used to resolve issues of whether public or non-public treatment should apply in some instances.” The Postal Service appreciates the Commission’s efforts to minimize the harm that may result from nonconsensual public disclosure or inadvertent public filing of commercially sensitive information. However, the Commission’s proposed rules do not address whether inadvertent public disclosure of non-public materials would constitute a waiver of any applicable privilege or exemption. According to the Department of Justice Guide to the Freedom of Information Act (FOIA), “it is generally found that agency carelessness or mistake in permitting access to certain information is not equivalent to waiver” of privilege or FOIA exemption status.⁶ The Commission’s proposed rules should provide certainty that this general principle of law will be recognized in the event that non-public materials are inadvertently disclosed to the public.

Therefore, as shown in the Appendix to these comments, proposed Rule 3007.101(a) should be revised to include the following sentence: “The inadvertent public disclosure of non-public materials does not constitute a waiver of privilege or Freedom of Information Act (FOIA) exemption status.” As also shown in the Appendix, proposed Rule 3007.101(a) should include the following additional sentence for clarification:

⁶ See Department of Justice Guide to the Freedom of Information Act, Discretionary Disclosure and Waiver, at 703 & fn. 82 (available at <https://www.justice.gov/sites/default/files/oip/legacy/2014/07/23/disclosure-waiver.pdf>) (citing numerous cases in which inadvertent disclosure of non-public materials did not amount to waiver).

“When non-public materials cease to be non-public for any reason, the loss of non-public status will apply only to those particular materials and not to any similar materials that have been submitted in the past or may be submitted in the future.”

C. The Commission’s Proposed Rules Do Not Provide Adequate Standards for the Amendment or Expiration of Non-Public Treatment.

Proposed Rule 3007.103 broadly authorizes the Commission to “amend the non-public treatment, if any, to be given to the materials at any time by order.” The Commission’s analysis of its proposed changes explains that such “amendment may occur if a person files a motion for disclosure under proposed §§ 3007.400 or 3007.401,” but also states “that issuance of the order or amendment may occur without a motion.” Proposed Rule 3007.103 provides no standards that would apply in the event of the Commission issuing an order *sua sponte* to amend the non-public status of materials. To ensure that the interests of notice and due process would be observed in this situation, the Commission should codify appropriate standards. Therefore, as shown in the Appendix, proposed Rule 3007.103 should provide a new subsection that contains the following language:

Prior to ordering the amendment of non-public treatment of materials *sua sponte*, the Commission will issue a notice of a preliminary determination to amend the non-public treatment of such materials. A response will be due within 7 calendar days of such notice of a preliminary determination, unless the Commission otherwise provides. Pending the Commission’s resolution of its preliminary determination, information designated as non-public will be accorded non-public treatment. The Commission will enter an order determining what non-public treatment, if any, will be given to the materials after the response period has expired. The determination of the Commission shall balance the interests of the parties as described in § 3007.104.

With regard to materials for which non-public treatment has expired, the Postal Service supports the Commission’s efforts to create a process that governs how such

materials will be treated under proposed Rule 3007.401. As the Commission states in its analysis, this process, which requires a motion for public disclosure and provides time for responses and replies, “take[s] into account the need for transparency, sound records management practices, and adequate protection of the commercial interests of affected persons, including the Postal Service.” Materials for which non-public treatment has expired should not be considered for public disclosure unless and until a movant has filed a formal request to publicly disclose such materials. Many of the third parties that hold a proprietary interest in non-public information that the Postal Service submits to the Commission lack familiarity with the Commission’s regulations as well as the resources to vigilantly watch for and react to upcoming deadlines that would place their commercially sensitive data at risk. Proposed Rule 3007.401 addresses this by appropriately requiring the parties who seek public disclosure, not the parties with a proprietary interest in the information, to take the first step in the Commission’s process of determining whether to publicly disclose materials. The Postal Service appreciates the Commission’s recognition of how this process should take into account the commercial interests of all affected persons.

However, proposed Rule 3007.400(a), governing motions for disclosure of non-public materials, and proposed Rule 3007.401(a), governing the expiration of non-public treatment, both include an inadequate initial period of non-public status of materials (10 years after the date of submission of such materials). This 10-year period is currently codified in existing Rule 3007.30, which the Commission originally proposed through a notice and comment proceeding in 2008.⁷ In its initial comments to the Commission’s

⁷ See PRC Order No. 96, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, Docket No. RM2008-1, August 13, 2008, at 8, 13, 23.

proposed rulemaking in that proceeding, the Postal Service urged the Commission to exempt the non-public status of “commercially or financially sensitive proprietary materials submitted to the Postal Service by third-parties” from expiration, as “such an approach could relieve third-party submitters -- many of whom may only be intermittent observers of or participants in the postal regulatory process -- from having to bear the burden and expense of the vigilance necessary to revisit the issue of confidentiality” after 10 years have passed.⁸ The Postal Service’s position on this matter remains the same. Expiration of non-public status after 10 years should not apply at all to materials specific to the identities of the Postal Service’s business customers, many of whom have remained the same throughout the years.

Moreover, this 10-year period is significantly shorter than the appropriate period for protection of nonpublic materials recognized in other contexts. For example, the FOIA provides a time limit for only one of its exemptions, which provides that “the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.”⁹ Therefore, the Commission’s proposed rules should grant a longer initial period of time for which non-public status generally applies, such as 25 years, and expressly exempt the non-public status of materials specific to the identities of Postal Service customers from expiration. To accomplish this, as shown in the Appendix, the phrase “up to 10 years” in proposed Rule 3007.400(a) should be replaced with “as determined by § 3007.401(a).” Proposed

⁸ See Initial Comments of the United States Postal Service, Docket No. RM 2008-1, September 25, 2008, at 18.

⁹ See 5 U.S.C. § 552(b)(5) (emphasis added).

Rule 3007.401(a) should accordingly be revised to read as follows: “With the exception of non-public materials specific to the identities of Postal Service customers, twenty-five years after the date of submission to the Commission, non-public materials shall lose non-public status unless otherwise provided by the Commission.”

Finally, proposed Rule 3007.401(c) requires a response to a motion for disclosure of materials for which non-public treatment has expired to be submitted within 3 business days of that motion when actual notice is provided by the movant. When actual notice is not provided, a response to the motion must be submitted within 7 days. Because it is unlikely that there would be great urgency to obtain materials that were filed at least 10 years before the request for access, as demonstrated by the strikethrough text in the Appendix, proposed Rule 3007.401(c) should apply the 7-day response period to all motions submitted pursuant to proposed Rule 3007.401(b), regardless of whether actual notice is provided. Also as shown in the Appendix, the reference to “10 years” in proposed Rule 3007.401(c) should be changed to “25 years” for the reasons discussed above.

II. THE COMMISSION’S PROPOSED RULES FOR THIRD-PARTY NOTIFICATION CREATE AN UNNECESSARY ADMINISTRATIVE BURDEN.

The Commission’s proposed rule 3007.200 would maintain the requirements of 39 CFR 3007.20 regarding third-party information: “if the submitter has reason to believe that any other person has a proprietary interest in the non-public materials, the submitter shall inform each affected person of the nature and scope of the submission to the Commission, including the pertinent docket designation(s) (if applicable).”

The Postal Service appreciates the need to protect third parties in Commission proceedings and to give third parties the opportunity to independently address confidentiality concerns with the Commission. However, as currently written, the rule imposes a large and impractical burden on parties like the Postal Service that submit large amounts of non-public information on a regular basis, particular in the filing of negotiated service agreements (NSAs) with customers. Many agreements contain third-party information, such as the identity of the customer's PC Postage provider or rates of settlement with foreign postal operators. The Postal Service files hundreds of these NSAs per year, most of which are assigned unique docket numbers. If the rules were interpreted to require each third party to be provided individualized notices for each filing, it would create a substantial administrative burden due to the sheer number of notifications that would be created and issued by the Postal Service. In addition, the requirement to provide docket numbers would create additional problems and delay because the Postal Service is often unable to reserve dockets well in advance of filing. Therefore, the third party notices would need to be drafted and sent out on the same day of filing, in the small window of time between when the docket number is requested and the filing is completed. This adds another time-sensitive step to the already difficult process of submitting NSAs for Commission review.

In most cases, the Postal Service addresses third party notification issues through its contractual relationships, and this approach is the most effective and appropriate method for dealing with such issues. Nearly every NSA contains a clause informing the customer that the agreement will be filed with the Postal Regulatory

Commission, both for initial approval as well as through the Annual Compliance Review process. Below is an example of the standard language used by the Postal Service:

Confidentiality. The Mailer acknowledges that this Agreement and supporting documentation will be filed with the Postal Regulatory Commission (“Commission”) in a docketed proceeding. The Mailer authorizes the USPS to determine the scope of information that must be made publicly available in any Commission docketed proceeding in which information related to this Agreement must be filed. The Mailer further understands that any unredacted portion of the Agreement or supporting information will be available on the Commission’s public website, www.prc.gov. In addition, the USPS may be required to file information in connection with this Agreement (including revenue, cost, or volume data) in other Commission dockets, including the Commission docket number for the Annual Compliance Report (ACR) for the USPS fiscal year(s) in which this Agreement is in effect. Each ACR docket has a distinct docket number, such as ACR201#, in which “201#” signifies the USPS fiscal year to which the ACR pertains. The Mailer has the right, in accordance with the Commission’s rules, to address its confidentiality concerns directly with the Commission. The procedure for making an application to the PRC for non-public treatment of materials believed to be protected from disclosure is found at Title 39, Code of Federal Regulations, Section 3007.22 found on the Commission’s website: www.prc.gov/Docs/63/63467/Order225.pdf.

This practice enables the Postal Service and third parties to ensure a full understanding of the Commission’s treatment of commercially sensitive third party information, while optimizing efficiency in communications and eliminating repetitive and unnecessary correspondence. In the case of foreign postal operators, the Postal Service provides notification through a one-time Universal Postal Union (UPU) circular, informing foreign postal operators that their information will be submitted to the Commission as part of our standard filing process.¹⁰ Regularly involved third parties such as PC postage providers or third-party suppliers are informed through a general letter, not a particular notification for every filing.

¹⁰ Universal Postal Union International Bureau Circular #173, *United States of America – Annual compliance reporting* (December 18, 2017)

Accordingly, the Commission should recognize that it is most appropriate and efficient for the Postal Service to address third party notification issues through contractual relationships and routine communications in international postal organizations. In the alternative, this practice could be incorporated into the Commission's rule through an exception to 3007.200(b) that limits the individualized notice requirement to situations where a third party has requested the individualized notice or the submitter has determined that any blanket notification is not sufficient. The Postal Service proposes the following language for the exception:

In cases where the information of any other person having a proprietary interest in the non-public materials is filed in multiple dockets, the submitter may give a notice of the planned disclosure without having to disclose the particular docket designations, and a single notice furnished at least once each year of the scope of the planned disclosures to be made will suffice. For persons having a proprietary interest that have also executed a contract or similar instrument providing notice of the planned disclosure, identification of the docket number designation may be waived.

Conclusion

This Rulemaking provides an opportunity to enhance the protection of nonpublic information filed with the Commission, develop efficient procedures for addressing issues related to nonpublic information, and eliminate unnecessary and burdensome requirements related to such information. The suggestions described by the Postal Service above and in the attached Appendix, if adopted, will aid the Commission in drafting rules that achieve these goals.

Respectfully submitted,

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APPENDIX

TITLE 39 PART 3007 CODE OF FEDERAL REGULATIONS CHANGES (Additions are underlined and deletions are marked with ~~striketrough~~.)

7. Revise part 3007 to read as follows:

PART 3007—NON-PUBLIC MATERIALS PROVIDED TO THE COMMISSION

Subpart A—General Provisions

Sec.

3007.100 Applicability.

3007.101 Definitions.

3007.102 Treatment of non-public materials.

3007.103 Commission action to determine non-public treatment.

3007.104 Standard for public disclosure of non-public materials.

Subpart B—Submitting Non-public Materials and Seeking Non-public Treatment

3007.200 General requirements for submitting non-public materials and seeking non-public treatment.

3007.201 Application for non-public treatment.

3007.202 Redacted version of the non-public materials.

3007.203 Unredacted version of the non-public materials.

3007.204 Protections for any other person with a proprietary interest.

3007.205 Non-public materials inadvertently filed publicly.

Subpart C—Seeking Access to Non-public Materials

3007.300 Eligibility for access to non-public materials.

3007.301 Motion for access to non-public materials.

3007.302 Non-dissemination, use, and care of non-public materials.

3007.303 Sanctions for violating protective conditions.

3007.304 Termination and amendment of access to non-public materials.

3007.305 Producing non-public materials in non-Commission proceedings.

Appendix A to subpart C of part 3007—Template Forms

Subpart D—Seeking Public Disclosure of Non-public Materials

3007.400 Motion for disclosure of non-public materials.

3007.401 Materials for which non-public treatment has expired.

Authority: 39 U.S.C. 503, 504.

Subpart A—General Provisions

§ 3007.100 Applicability.

The rules in this part implement provisions in 39 U.S.C. 504(g). These rules apply whenever:

(a) the Postal Service claims that any document or other matter it provides to the Commission under a subpoena issued under 39 U.S.C. 504(f), or otherwise at the request of the Commission in connection with any proceeding or other purpose under title 39 of the U.S. Code, contains non-public material;

(b) any other person claims that any document or other matter provided to the Commission contains non-public material;

(c) the Commission is determining the appropriate degree of confidentiality to be accorded information identified by the Postal Service or any other person to contain non-public material in accordance with these rules; or

(d) the Commission is determining how to ensure appropriate confidentiality for non-public materials furnished to the Postal Service or any other person in accordance with these rules.

§ 3007.101 Definitions.

(a) Non-public materials means any information, documents, and things provided to the Commission that are claimed to be exempt from disclosure by the Postal Service pursuant to 39 U.S.C. 504(g), 3652(f) or 3654(f), or claimed to be protectable under Federal Rule of Civil Procedure 26(c) by any person other than the Postal Service with a proprietary interest in the materials. Non-public materials includes any information, documents, and things submitted to the Commission that are claimed to contain information that is described in 39 U.S.C. 410(c) or exempt from public disclosure under 5 U.S.C. 552(b). Non-public materials cease to be non-public if the

status has expired or been terminated by the Commission pursuant to this part. Except as provided by § 3007.205, non-public materials cease to be non-public if the submitter publicly discloses the materials with the consent of each affected person with a propriety interest in the materials (if applicable). The inadvertent public disclosure of non-public materials does not constitute a waiver of privilege or Freedom of Information Act (FOIA) exemption status. When non-public materials cease to be non-public for any reason, the loss of non-public status will apply only to those particular materials and not to any similar materials that have been submitted in the past or may be submitted in the future.

(b) Submitter means any natural or legal person, including the Postal Service, that provides non-public materials to the Commission and seeks non-public treatment in accordance with the rules of this part.

§ 3007.102 Treatment of non-public materials.

(a) Except as described in part 3007 or part 3004 of this chapter, the Commission will not disclose or grant access to non-public materials.

(b) To accord appropriate confidentiality to non-public materials during any stage of a proceeding before the Commission, or in connection with any other purpose under title 39 of the U.S. Code, the Commission may, based on Federal Rule of Civil Procedure 26(c):

- (1) Prohibit the public disclosure of the non-public materials;
- (2) Specify terms for public disclosure of the non-public materials;
- (3) Order a specific method for disclosing the non-public materials;

(4) Restrict the scope of the disclosure of the non-public materials as they relate to certain matters;

(5) Restrict who may access the non-public materials;

(6) Require that a trade secret be revealed only in a specific and limited manner or to limited or specified persons; and

(7) Order other relief as appropriate including sealing a deposition or part of a proceeding.

§ 3007.103 Commission action to determine non-public treatment.

(a) Information requests as described in subpart E of part 3001 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be given to the materials. Upon motion by any person, or on its own motion, the Commission may issue an order containing a description of and timeframe for the non-public treatment, if any, to be given to materials claimed by any person to be non-public. The Commission may amend the non-public treatment, if any, to be given to the materials at any time by order.

(b) Prior to ordering the amendment of non-public treatment of materials *sua sponte*, the Commission will issue a notice of a preliminary determination to amend the non-public treatment of such materials. A response will be due within 7 calendar days of such notice of a preliminary determination, unless the Commission otherwise provides. Pending the Commission's resolution of its preliminary determination, information designated as non-public will be accorded non-public treatment. The Commission will enter an order determining what non-public treatment, if any, will be

given to the materials after the response period has expired. The determination of the Commission shall balance the interests of the parties as described in § 3007.104.

§ 3007.104 Standard for public disclosure of non-public materials.

(a) In determining whether to publicly disclose materials claimed by the Postal Service to be non-public, the Commission shall balance the nature and extent of the likely commercial injury identified by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

(b) In determining whether to publicly disclose materials in which the Commission determines any person other than the Postal Service has a proprietary interest, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

Subpart B—Submitting Non-public Materials and Seeking Non-public Treatment

§ 3007.200 General requirements for submitting non-public materials and seeking non-public treatment.

(a) Whenever providing non-public materials to the Commission, the submitter shall provide the following on the same business day: an application for non-public treatment that clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission in accordance with § 3007.201, a redacted (public) version of the non-public materials in accordance with § 3007.202, and an unredacted (sealed) version of the non-public materials in accordance with § 3007.203.

(b) Before submitting non-public materials to the Commission, if the submitter has reason to believe that any other person has a proprietary interest in the non-public materials, the submitter shall inform each affected person of the nature and scope of the submission to the Commission, including the pertinent docket designation(s) (if applicable) and that the affected person may address any confidentiality concerns directly with the Commission. In cases where the information of any other person having a proprietary interest in the non-public materials is filed in multiple dockets, the submitter may give a notice of the planned disclosure without having to disclose the particular docket designations, and a single notice furnished at least once each year of the scope of the planned disclosures to be made will suffice. For persons having a proprietary interest that have also executed a contract or similar instrument providing notice of the planned disclosure, identification of the docket number designation may be waived.

§ 3007.201 Application for non-public treatment.

(a) Burden of persuasion. An application for non-public treatment shall fulfill the burden of persuasion that the material designated as non-public should be withheld from the public.

(b) Contents of application. An application for non-public treatment shall include a specific and detailed statement setting forth the information specified in paragraphs (b)(1)-(b)(8) of this section:

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

(2) A statement of whether the submitter, any other person, or both have a proprietary interest in the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i)-(iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and e-mail address of an individual.

(i) If the submitter has a proprietary interest in the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the materials, identification of each person who is known to have a proprietary interest in the materials. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any other person have a proprietary interest in the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the materials are non-public.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

(5) At least one specific hypothetical, illustrative example of each alleged harm.

(6) The extent of the protection from public disclosure alleged to be necessary.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

(8) Any other relevant factors or reasons to support the application.

(c) Incorporation by reference. If the material designated as non-public has been previously claimed to be non-public material by a prior application for non-public treatment, the submitter may incorporate by reference the prior application. Any application that incorporates by reference a prior application that is accessible through the Commission's Web site (<http://www.prc.gov>) shall state the date, docket number, and the name of the filer of the prior application. In all other circumstances, the application that incorporates by reference a prior application shall attach the prior application.

§ 3007.202 Redacted version of the non-public materials.

(a) Except as allowed under paragraph (b) of this section, the submitter shall use the graphical redaction (blackout) method for all redacted materials. The submitter shall blackout only the material that is claimed to be non-public.

(b) The submitter shall justify using any other redaction method. The application for non-public treatment shall state with particularity the competitive harm or practical difficulty alleged to result from using the blackout method. The submitter shall specifically identify any alterations made to the unredacted version, including the location and number of lines or pages removed.

(c) If electronic, the redacted version shall be filed in a searchable format, unless the submitter certifies that doing so would be impracticable.

§ 3007.203 Unredacted version of the non-public materials.

(a) Each page, item, and thing, or portion thereof, of the unredacted version of the materials for which non-public treatment is sought shall be marked in a manner reasonably calculated to alert custodians to the confidential nature of the materials. The Filing Online method accessible through the Commission's Web site (<http://www.prc.gov>) described under §§ 3001.9 and 3001.10 of this chapter may not be used to submit the unredacted version of non-public materials.

(b) In lieu of §§ 3001.9 and 3001.10 of this chapter, the filing of the unredacted version of the non-public materials shall be made in accordance with the following requirements concerning the filing process, form, and number of copies.

(1) Except if using an alternative system approved by the Commission under paragraph (b)(2) of this section, the unredacted version of the non-public materials shall be filed in a sealed envelope clearly marked "Confidential. Do Not Post on Web" to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001. Two copies of the unredacted version of the non-public materials shall be filed using an electronic format such as compact discs (CDs) or digital video discs (DVDs) that shall be clearly marked "Confidential. Do Not Post on Web." The non-public materials may not be password protected. Spreadsheets shall display the formulas used and their links to related spreadsheets. All workpapers or data shall be filed in a form, and be accompanied by sufficient explanation and documentation, to allow them to be replicated using a publicly

available PC application. If making an electronic unredacted version of the non-public materials is impracticable, two hard copies (paper) versions of the non-public materials may be filed.

(2) On behalf of the Commission, the Secretary has authority to approve the use of a secure alternative system to file non-public materials. The Secretary may set forth any minimum requirements associated with using an alternative system. If a filer using the alternative system fails to comply with any of the Secretary's requirements, the Secretary has discretion to revoke the filer's eligibility to use the alternative system or impose requirements specific to the filer as necessary to ensure secure transmission of non-public materials.

§ 3007.204 Protections for any other person with a proprietary interest.

Any other person with a proprietary interest in materials that have been or will be submitted to the Commission may address any confidentiality concerns directly with the Commission by seeking non-public treatment in accordance with the requirements of this subpart, responding to a motion for access to non-public materials in accordance with the requirements of subpart C of this part, or responding to a motion for disclosure of non-public materials in accordance with the requirements of subpart D of this part.

§ 3007.205 Non-public materials inadvertently filed publicly.

Any filer or person with a proprietary interest that discovers the inclusion of materials that could have been filed non-publicly within a public filing made in accordance with §§ 3001.9 and 3001.10 of this chapter shall telephone Dockets personnel immediately to request that the non-public material be removed from the publicly available material. Upon receipt of that telephone request, Dockets personnel

will remove from the publicly available material that material for which non-public treatment is being requested until the end of the next business day in order to provide the filer or person with a proprietary interest an opportunity to file an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any filer makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this filer as necessary to ensure secure filing of non-public materials.

Subpart C—Seeking Access to Non-public Materials

§ 3007.300 Eligibility for access to non-public materials.

(a) The following persons may access non-public materials without an order issued pursuant to § 3007.301(e):

- (1) Members of the Commission;
- (2) Commission employees, including Public Representatives, carrying out their official responsibilities;
- (3) Contractors, attorneys, or other non-employee subject matter experts, who have entered into a contractual arrangement with the Commission and executed appropriate nondisclosure agreements that give effect to the protections found in Appendix A to this subpart, assisting the Commission in carrying out its duties;
- (4) Reviewing courts and their staffs;
- (5) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(b) No person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using non-public materials shall be granted access to non-public materials. ~~Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.~~

(c) Any person not described in paragraphs (a) or (b) of this section may request access to non-public materials as described in § 3007.301, for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) ~~or aiding the initiation of a proceeding before the Commission.~~

§ 3007.301 Motion for access to non-public materials.

(a) Filing requirements. A request for access to non-public materials shall be made by filing a motion with the Commission. Any part of the motion revealing non-public materials shall be filed in accordance with subpart B of this part. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(b) Content requirements. The motion shall:

- (1) Identify the particular non-public documents to which the movant seeks access;
- (2) Include a detailed statement justifying the request for access;

~~(i) if access is sought to aid participation in any pending Commission proceeding, the motion shall that identify esy all proceedings (including compliance proceedings) in which the movant proposes to use the materials and how those materials are relevant to those proceedings, or~~

~~(ii) if access is sought to aid initiation of a proceeding before the Commission, the motion shall describe the subject of the proposed proceeding, how the materials sought are relevant to that proposed proceeding, and when the movant anticipates initiating the proposed proceeding;~~

(3) List all relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the movant, and whether the movant is affiliated with the delivery services, communications or mailing industries;

(4) Specify if actual notice of the motion has been provided to each person identified in the application pursuant to § 3007.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or e-mail messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person;

(5) Attach a description of protective conditions completed and signed by the movant's attorney or non-attorney representative, who may use and modify the template Protective Conditions Statement in Appendix A to this subpart; and

(6) Attach a certification to comply with protective conditions executed by each person (and any individual working on behalf of that person) seeking access, who may use and modify the template Certification to Comply with Protective Conditions in Appendix A to this subpart.

(c) Response. If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3007.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or e-mail messages, a response to the motion is due within 3 business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within 7 calendar days of filing the motion, unless the Commission otherwise provides.

(d) Reply. No reply to a response shall be filed, unless the Commission otherwise provides.

(e) Commission ruling. The Commission may enter an order at any time after receiving a motion if the movant states that: actual notice has been given to each persons identified pursuant to § 3007.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining if access will be granted after the response period described in paragraph (c) of this section has expired. If no opposition to the motion has been filed by the submitter or any other person with a proprietary interest before the expiration of the response period described in paragraph (c) of this section, the Commission may issue an order granting access, subject to the agreed protective conditions. In determining whether to grant access to non-public materials, the

Commission shall balance the balance the interests of the parties based on Federal Rule of Civil Procedure 26(c). If access is granted, access shall commence following the issuance of the appropriate order setting forth all protective conditions.

§ 3007.302 Non-dissemination, use, and care of non-public materials.

(a) No person who has been granted access to non-public materials in accordance with §§ 3007.300 or 3007.301 may disseminate the materials in whole or in part to any person not allowed access pursuant to §§ 3007.300 or 3007.301.

(b) Persons with access to non-public materials under §§ 3007.300 or 3007.301 shall use non-public materials only for the purposes for which the non-public materials are supplied.

(c) Persons with access to non-public materials under §§ 3007.300 or 3007.301 shall protect the non-public materials from any person not granted access under §§ 3007.300 or 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

§ 3007.303 Sanctions for violating protective conditions.

(a) If a person who has been granted access to non-public materials under § 3007.301 violates the terms of the order granting access, the Commission shall impose sanctions on the person who violated the order, the persons or entities on whose behalf the person was acting, or both. The sanctions may include:

(1) Dismissing the proceeding in whole or in part;

(2) Ruling by default against the person who violated the order or the persons or entities on whose behalf the person was acting; and

(3) Such other sanctions, as deemed appropriate by the Commission.

(b) This rule does not prevent any person, including the Postal Service, whose interests are damaged by the violation of an order granting access subject to protective conditions, from pursuing any remedies available under the law against the person who violated the order, the persons or entities on whose behalf the person was acting, or both.

§ 3007.304 Termination and amendment of access to non-public materials.

(a) Termination of access.

(1) Except as provided in paragraph (b) of this section, access to non-public materials granted under § 3007.301 terminates either when the Commission issues the final order or report concluding the proceeding(s) in which the participant who filed the motion seeking access represented that the non-public materials would be used, or when the person granted access withdraws or is otherwise no longer involved in the proceeding(s), whichever occurs first. For purposes of this paragraph, an order or report is not considered final until after the possibility of judicial review expires.

(2) Upon termination of access, all non-public materials, and any duplicates, in the possession of each person (and any individual working on behalf of that person) granted access shall be destroyed or returned to the Commission. The participant who filed the motion seeking access shall file with the Commission a notice of termination of access and attach a certification of compliance with protective conditions executed by each person (and any individual working on behalf of that person) granted access to the

non-public materials. The template Certification of Compliance with Protective Conditions and Termination of Access in Appendix A to this subpart may be used and modified to comply with this requirement.

(b) Amendment of Access. Any person may file a motion seeking to amend any protective conditions related to access of non-public materials, including extending the timeframe for which access is granted or expanding the persons to whom access is to be granted, in accordance with § 3007.301.

§ 3007.305 Producing non-public materials in non-Commission proceedings.

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials that a person obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within 2 days of receipt of the subpoena or order, notify each person identified pursuant to § 3007.201(b)(2) of the pendency of the subpoena or order to allow time to object to that production or to seek a protective order or other relief.

(b) Any person that has obtained non-public materials under protective conditions ordered by the Commission and seeks to disclose the non-public materials in a court or other administrative proceeding shall make a good faith effort to obtain protective conditions at least as effective as those set forth in the Commission order establishing the protective conditions.

(c) Unless overridden by the reviewing court or other administrative agency, protective conditions ordered by the Commission will remain in effect.

Appendix A to subpart C of part 3007—Template Forms

Protective Conditions Statement

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter “these materials”) in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

_____ (name of participant filing motion) (hereinafter “the movant”) requests access to these materials related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter “this matter”).

The movant has provided to each person seeking access to these materials:

- this Protective Conditions Statement,
- the Certification to Comply with Protective Conditions,
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission’s rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3007 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3007.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.
2. In accordance with 39 CFR 3007.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive

advantage from using these materials shall be granted access to these materials. ~~Involved in competitive decision making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.~~

3. In accordance with 39 CFR 3007.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3007.300(a) (Commission and court personnel) or 3007.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3007 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3007.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3007.302(b) and (c), all persons granted access to these materials:

- a. must use these materials only related to this matter; and
- b. must protect these materials from any person not authorized to obtain access under 39 CFR 3007.300 or 3007.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:
- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;
 - b. Excerpts from, parts of, or the entirety of these materials;
 - c. Written materials that quote or contain these materials; and

- d. Revised, amended, or supplemental versions of these materials.
6. All copies of these materials will be clearly marked as "Confidential" and bear the name of the person granted access.
7. Immediately after access has terminated pursuant to 39 CFR 3007.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3007.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.
8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

(signature of representative)

/s/

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(e-mail address of representative)

(choose the appropriate response)

Attorney / Non-Attorney Representative
for

(name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3007.301(b)(5).

Certification to Comply with Protective Conditions

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter “these materials”) filed in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

_____ (name of participant filing motion) requests that the Commission grant me access to these materials to use related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter “this matter”).

I certify that:

- I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;
- I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and
- I will comply with all protective conditions established by the Commission.

(signature of individual receiving access)

/s/ _____

(print name of individual receiving access)

(title of individual receiving access)

(employer of individual receiving access)

(name of the participant filing the motion)

(date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3007.301(b)(6).

Certification of Compliance with Protective Conditions and Termination of Access

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter “these materials”) filed in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

The Commission granted the request by _____ (name of participant filing notice) to grant me access to these materials to use related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter “this matter”).

I certify that:

- I accessed, maintained, and used these materials in accordance with the protective conditions established by the Commission;
- Effective _____ (date), my access to these materials was terminated; and
- Effective _____ (date), I no longer have any of these materials or any duplicates.

(signature of individual granted access)

/s/ _____

(print name of individual granted access)

(title of individual granted access)

(employer of individual granted access)

(name of participant filing notice)

(date)

You may delete the instructional text to complete this form. This form should be filed as an attachment to the notice of termination of access to non-public materials under 39 CFR 3007.304(a)(2).

Subpart D—Seeking Public Disclosure of Non-public Materials

§ 3007.400 Motion for disclosure of non-public materials.

(a) Application of this rule. This rule applies to non-public material during the initial duration of non-public status, ~~up to 10 years~~ as determined by § 3007.401(a), and any non-public material for which the Commission enters an order extending the duration of that status under § 3007.401(a).

(b) Motion for disclosure of non-public materials. Any person may file a motion with the Commission requesting that non-public materials be publicly disclosed. Any part of the motion revealing non-public materials shall be filed in accordance with subpart B of this part. The motion shall justify why the non-public materials should be made public and specifically address any pertinent rationale(s) provided in the application for non-public treatment. The motion shall specify whether actual notice of the motion has been provided to each person identified in the application pursuant to § 3007.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or e-mail messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(c) Response. If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3007.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or e-mail messages, a response to the motion is due within 3 business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within 7 calendar days of filing the motion, unless the Commission otherwise provides.

(d) Reply. No reply to a response shall be filed, unless the Commission otherwise provides.

(e) Non-public treatment pending resolution. Pending the Commission's resolution of the motion, information designated as non-public will be accorded non-public treatment.

(f) Commission ruling. The Commission may enter an order at any time after receiving a motion if the movant states that: actual notice has been given to each person identified pursuant to § 3007.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining what non-public treatment, if any, will be given to the materials after the response period described in paragraph (c) of this section has expired. The determination of the Commission shall balance the interests of the parties as described in § 3007.104.

§ 3007.401 Materials for which non-public treatment has expired.

(a) Expiration of non-public treatment. With the exception of non-public materials specific to the identities of Postal Service customers, Ten twenty-five years

after the date of submission to the Commission, non-public materials shall lose non-public status unless otherwise provided by the Commission.

(b) Motion for Disclosure of Materials for Which Non-Public Treatment has Expired. Any person may file a motion requesting that materials for which non-public treatment has expired under paragraph (a) of this section be publicly disclosed. Any part of the motion revealing non-public materials shall be filed in accordance with subpart B of this part. The motion shall identify the materials requested and date(s) that materials were originally submitted under seal. The motion shall specify whether actual notice of the motion has been provided to each person identified in the application pursuant to § 3007.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or e-mail messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year. All documents are treated in accordance with the Commission's record retention schedule, which may reduce the availability of some non-public information.

(c) Response. ~~If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3007.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or e-mail messages, a response to~~

~~the motion is due within 3 business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a~~ A response to the motion is due within 7 calendar days of the filing of the motion, unless the Commission otherwise provides. Any response opposing the motion shall request an extension of non-public status by including an application for non-public treatment compliant with § 3007.201. This extension application shall also include specific facts in support of any assertion that commercial injury exists despite the passage of ~~40~~25 years pursuant to paragraph (a) of this section or the timeframe established by Commission order under § 3007.104.

(d) Reply. Within 7 calendar days of the filing of a response, any person (including the movant) may file a reply, unless the Commission otherwise provides.

(e) Non-public treatment pending resolution. Pending the resolution of the motion by the Commission, information designated as non-public will be accorded non-public treatment.

(f) Ruling. The Commission may grant the motion at any time after receiving a motion if the movant states that: actual notice has been given to each person identified pursuant to § 3007.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission may grant the motion at any time after the response period described in paragraph (c) of this section has expired. The Commission may deny the motion and enter an order extending the duration of non-public status at any time after the reply period described in paragraph (d) of this section has expired. The determination of the Commission shall balance the interests of the parties as described in § 3007.104.